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8 Attorneys for the United States of America

9 UNITED STATES DISTRICT COURT
10 NORTHERN DISTRICT OF CALIFORNIA
11 SAN FRANCISCO DIVISION
12

13 UNITED STATES OF AMERICA,)

14 Plaintiff,)

15 v.)

16 SHAWN WEBB FITZGERALD)

17 Defendants.)
18

No. CR-02-0406 SI

PLEA AGREEMENT

19 I, Shawn Webb Fitzgerald, and the United States Attorney's Office for the Northern
20 District of California (hereafter "the government") enter into this written plea agreement (the
21 "Agreement") pursuant to Rule 11(c)(1)(C) of the Federal Rules of Criminal Procedure:

22 The Defendant's Promises

23 1. I agree to plead guilty to count two in the indictment charging me with possession
24 of unauthorized access devices in violation of 18 U.S.C. § 1029(a)(3). I agree that the elements
25 and maximum penalties for count two are as follows: (1) defendant knowingly and with the
26 intent to defraud; (2) had possession of fifteen or more devices which were counterfeit and
27 unauthorized access devices as defined in 18 U.S.C. § 1029(e)(1), (2) and (3); and (3) the
28 possession affected interstate and foreign commerce.

PLEA AGREEMENT
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- | | | | |
|---|----|---------------------------------|-----------|
| 1 | a. | Maximum prison sentence | 10 years |
| 2 | b. | Maximum fine | \$250,000 |
| 3 | c. | Maximum supervised release term | 3 years |
| 4 | d. | Mandatory special assessment | \$100 |

5 2. I agree that I am guilty of the offense to which I will plead guilty, and I agree that
6 the following facts are true:

7 On about December 1, 2001, I began stealing mail from various mail boxes located
8 throughout the Bay Area. Contained in many of these pieces of mail were bank statements with
9 checking account numbers and related information; credit cards; credit card statements with
10 credit card account numbers; stock brokerage statements with brokerage account information;
11 and other materials. From December 1, 2001 through April 18, 2001, I had in my possession
12 fifteen or more such credit cards and account numbers which I was not authorized to have by the
13 true owners and which I intended to use to fraudulently obtain goods, services, and other things
14 of value. These credit cards and account numbers which were contained in the account
15 statements had been mailed from another state to California.

16 3. I agree to give up all rights that I would have if I chose to proceed to trial,
17 including the rights to a jury trial with the assistance of an attorney; to confront and cross-
18 examine government witnesses; to remain silent or testify; to move to suppress evidence or raise
19 any other Fourth or Fifth Amendment claims; to any further discovery from the government; and
20 to pursue any affirmative defenses and present evidence.

21 4. I agree to give up my right to appeal my conviction, the judgment, and orders of
22 the Court. I also agree to waive any right I may have to appeal my sentence.

23 5. I agree not to file any collateral attack on my conviction or sentence, including a
24 petition under 28 U.S.C. § 2255, at any time in the future after I am sentenced, except for a claim
25 that my constitutional right to the effective assistance of counsel was violated.

26 6. I agree not to ask the Court to withdraw my guilty plea at any time after it is
27 entered, unless the Court declines to accept the sentence agreed to by the parties. I agree that the
28 government may withdraw from this agreement if the Court does not accept the agreed upon

1 sentence set out below.

2 7. I agree that the Sentencing Guidelines should be calculated as follows, and that I
3 will not ask for any other adjustments to or reductions of the offense level:

- | | | | |
|----|----|--|------------|
| 4 | a. | Base Offense Level, U.S.S.G. § 2B1.1(a)(2002 Edition): | 6 |
| 5 | b. | Loss exceeds \$1 million, U.S.S.G. § 2B1.1(b)(I) | +16 |
| 6 | c. | More than 50 victims, U.S.S.G. § 2B1.1(b)(2)(B) | + 4 |
| 7 | d. | Acceptance of responsibility: | <u>- 3</u> |
| 8 | | (If I meet the requirements of | |
| 9 | | U.S.S.G. § 3E1.1(a)) | |
| 10 | e. | Adjusted offense level | 23 |

11 8. I agree that an appropriate disposition of this case is as follows:

- | | | |
|----|----|---|
| 12 | a. | Sentencing Guideline level 23 and Criminal History category V (84-105 |
| 13 | | month imprisonment; |
| 14 | b. | 3 years of supervised release (with conditions to be fixed by the Court); |
| 15 | | and |
| 16 | c. | \$ 100 special assessment. |

17 In return for the government's promises set out below, I agree to pay restitution for all the losses
18 caused by all the schemes or offenses with which I was charged in this case, and I agree that the
19 amount of restitution will not be limited to the loss attributable to the count(s) to which I am
20 pleading guilty. I agree that I will make a good faith effort to pay any fine, forfeiture or restitution
21 I am ordered to pay. Before or after sentencing, I will, upon request of the Court, the
22 government, or the U.S. Probation Office, provide accurate and complete financial information,
23 submit sworn statements and give depositions under oath concerning my assets and my ability to
24 pay, surrender assets I obtained as a result of my crimes, and release funds and property under my
25 control in order to pay any fine, forfeiture, or restitution. I agree to pay the special assessment at
26 the time of sentencing.

27 9. I agree not to commit or attempt to commit any crimes before sentence is imposed
28 or before I surrender to serve my sentence. I also agree not to violate the terms of my pretrial

1 release (if any); intentionally provide false information to the Court, the Probation Office,
2 Pretrial Services, or the government; or fail to comply with any of the other promises I have
3 made in this Agreement. I agree that, if I fail to comply with any promises I have made in this
4 Agreement, then the government will be released from all of its promises below, but I will not be
5 released from my guilty plea.

6 10. I agree that this Agreement contains all of the promises and agreements between
7 the government and me, and I will not claim otherwise in the future.

8 11. I agree that this Agreement binds the U.S. Attorney's Office for the Northern
9 District of California only, and does not bind any other federal, state, or local agency.

10 The Government's Promises

11 12. The government agrees to move to dismiss any open charges pending against the
12 defendant in the captioned indictment at the time of sentencing.

13 13. The government agrees not to file or seek any additional charges against the
14 defendant that could be filed as a result of the investigation that led to the captioned indictment.

15 14. The government agrees that the appropriate sentence in this case should be as set
16 forth in paragraph 8 above, unless the defendant violates the agreement as set forth in paragraph
17 9 above.

18 The Defendant's Affirmations

19 15. I confirm that I have had adequate time to discuss this case, the evidence, and this
20 Agreement with my attorney, and that he has provided me with all the legal advice that I
21 requested.

22 16. I confirm that while I considered signing this Agreement, and at the time I signed
23 it, I was not under the influence of any alcohol, drug, or medicine.

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1 17. I confirm that my decision to enter a guilty plea is made knowing the charges that
2 have been brought against me, any possible defenses, and the benefits and possible detriments of
3 proceeding to trial. I also confirm that my decision to plead guilty is made voluntarily, and no
4 one coerced or threatened me to enter into this agreement.

5 Dated: _____

6 SHAWN WEBB FITZGERALD
7 Defendant

8 KEVIN V. RYAN
9 United States Attorney

10 Dated: _____

11 ANNE-CHRISTINE MASSULLO
Assistant United States Attorney

12 I have fully explained to my client all the rights that a criminal defendant has and all the
13 terms of this Agreement. In my opinion, my client understands all the terms of this Agreement
14 and all the rights he is giving up by pleading guilty, and, based on the information now known to
15 me, his decision to plead guilty is knowing and voluntary.

16 Dated: _____

17 DANIEL P. BLANK
Attorney for Defendant